THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 22954 OF 2000

Dated 12th September, 2007

Between:

Smt. M.Yashodamma and others.

…Petitioners.

And

The Commissioner of Appeals,
O/o Chief Commissioner of Land
Administration, A.P., Hyderabad and others.

…Respondents.

ORAL ORDER:

In this writ petition, the petitioners have questioned the order of the Joint Collector dated 18-12-1995 in proceedings D.Dis.B4/1220/94 cancelling the assignment of land to an extent of Ac.3.93 cents made in favour of the husband of the first petitioner and father of petitioners 2 to 4, as confirmed by the appellate authority i.e. the Commissioner of Appeals vide his orders dated 14.9.2000 in Proc. No.BCW/2/612/96.

An extent of Ac.3.92 cents of land covered by Survey No.841 situated at Garnimitta village in K.V.Palli Mandal, Chittoor District was originally assigned in favour of one P.Venkataswamy in proceedings AM No.712/4/68, dated 17.1.1959. Subsequently, on the ground that the said original assignee had violated the conditions of assignment by selling the land to third parties, the DKT patta issued to the said assignee was cancelled in the year 1981 in proceedings No.B4/SR.304/81. After cancellation of the said patta in favour of the original assignee, on the application of the petitioner, his claim was considered and ultimately, the said piece of land was assigned in favour of M.Venkatasiddaiah who is the husband of the first petitioner and father of petitioner Nos. 2 to 4 by order of the Tahasildar dated 15.4.1982 in proceedings No. AM No.531/4/91. Consequent to the issuance of patta, it is the case of the petitioners that since 1982, Venkatasiddaiah was in possession and after his death, the petitioners, as legal heirs, came into possession and are cultivating the land. In 1994, the grandson of the original assignee, namely, P.Ramanaiah, filed a petition before the Revenue Divisional Officer for restoration of the land in Survey No.841 admeasuring Ac.3.93 cents stating that the land was assigned in the name of his grandfather. On such petition, reports

were called for from the Mandal Revenue Officer. It appears that the Mandal Revenue Officer reported that the assignee i.e. the husband of the first petitioner, Venkatasiddaiah, was owning an extent of Ac.8.09 cents at the time of assignment of land in his favour and as such he was ineligible for grant of assignment. Based on such report of the Mandal Revenue Officer, a show cause notice was issued calling explanation from M.Venkatasiddaiah as to why the assignment granted in his favour should not be cancelled. On the ground that in spite of service of notice and giving several opportunities, he did not respond to the show-cause notice, the Joint Collector passed order dated 18.12.1995 in proceedings D.Dis.B4/1220/94 cancelling the assignment on the ground that he had suppressed holding of his agricultural land to an extent of Ac.8.09 cents of patta land at the time of assignment.

As against the orders of the Joint Collector, the petitioners filed a Revision Petition before the Commissioner of Appeals. In the grounds of revision, it is specifically stated that the orders of cancellation were made solely based on the ex parte report submitted by the Mandal Revenue Officer, in which, he had wrongly stated that the assignee was holding an extent of Ac.8.09 cents of land at the time of assignment. Further, giving the particulars of the lands owned by his father and grandfather, it is stated that grand father of Venkatasiddaiah by name late Reddaiah was holding an extent of Ac.18.50 cents of land and after his death, the said land devolved on his three sons, namely, Chalamaiah Naidu, Narayana Naidu, Krishnaiah Naidu and as such only an extent of Ac.6.16 cents of land fell to the share of Chalamaiah Naidu who is the father of Venkata Siddaiah i.e. the assignee. It is further stated that as he is having two brothers, if it is notionally divided, it comes to an extent of Ac.2.05 cents of land on the date of assignment and as such, there are no valid reasons for cancelling the assignment. The Revisional authority vide his order dated 14.9.2000 in proceedings No.BCW2/612/96 had again mainly relied on the report of the

Mandal Revenue Officer and by recording a finding that the assignee gave statement suppressing the facts about his share which he would get by virtue of inheritance out of Ac.32.28 cents held by his joint family, confirmed the order of cancellation of assignment ordered by the Joint Collector.

In this writ petition, it is the case of the petitioners that though it was alleged that the assignee was the government employee, but, he was not an employee and Branch Post Office was set up in his house and he was assisting the regular employee and he was not employed on the date of assignment. It is also stated that as the assignee i.e. Venkata Siddaiah was suffering with serious kidney ailment and most of the time, he was admitted as inpatient in S.V.Institute of Medical Sciences in 1994 and 1995 and as such, he could not respond to the show-cause notice. In that view of the matter, only based on the ex parte report, the orders of cancellation were passed. It is also the case of the petitioners that in spite of raising several grounds, the revisional authority did not consider the revision with reference to grounds of revision and simply confirmed the order of the Joint Collector based on the ex parte report of the Mandal Revenue Officer.

In the counter-affidavit filed on behalf of the respondents, while admitting that the order of cancellation was based on the report of the Mandal Revenue Officer, it is stated that the husband of the first petitioner was holding an extent of Ac.8.09 cents of land and he was also holding the post of Branch Post Master, and as such, he was not eligible for assignment and by suppressing the facts, he got the land assigned.

Heard the learned counsel for the petitioners and the learned Government Pleader for respondents.

It is not in dispute that the assignment was made in the year 1982 after considering the eligibility of the petitioner after cancellation of patta granted to the original assignee by name, P. Venkataswamy. The proceedings of cancellation against the

husband of the first petitioner were initiated on the application of the grandson of the original assignee wherein he had requested for restoration of land to him. Though no orders were passed considering his request, but cancellation orders are passed basing on the report submitted by the Mandal Revenue Officer, in which, he has stated that the joint family of the assignee was holding an extent of Ac.32.38 cents of land. It is the specific case of the petitioner that no notice was issued by the Mandal Revenue Officer before preparing such a report. The said aspect is not controverted in the counter. Though in the order of the Joint Collector, it is stated that in spite of service of show-cause notice and giving several opportunities, the assignee did not choose to appear before him to put-forth his case, but, however, from a perusal of the material papers filed along with the writ petition, it appears that the husband of the first petitioner after assignment was made was suffering with kidney disorder and the Case Summary & Discharge Record reveals that frequently he was being admitted as an inpatient in S.V. Institute of Medical Sciences, Tirupati. In that view of the matter, it appears that only due to his ailment and suffering, he did not respond to the notice. Even in the Revision Petition filed before the first respondent, the petitioners have categorically raised the grounds with regard to the extent held by the assignee as on the date of grant of assignment. Ground Nos. 5 and 6, which are relevant read thus:

> "(5) The view taken by the 1st respondent for cancellation of assignment holding that the petitioner is suppressed the fact that he own Ac.8.09 covered by family properties is untenable, as such conclusion is drawn on the basis of the incorrect and ex parte report submitted by the M.R.O.
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> (6) The 1st respondent failed to see that petitioner's grand father late Reddaiah held an extent of Ac.18.50 cents and after his death, the said land was equally divided among his 3 sons, namely, i) Chalamaiah Naidu, ii) Narayana Naidu (iii) Krishnaiah Naidu. As such an extent of Ac.6.16 cents fell to the share of the Chalamaiah Naidu the father of the petitioner herein. Since the father of the petitioner is having 3 sons namely (i) Venkata

> Siddaiah (Petitioner herein) (ii) M.R.C.Naidu and (iii) Radha Krishna Naidu, the petitioner will get only 2-05 in the land held by his joint family. Hence, the statement of the M.R.O. made in his report submitted to the Joint Collector, stating that the petitioner's father Chalamaiah Naidu owns Ac.32.38 cents instead of his grand father Sri M.Reddiah is totally incorrect and improper. In view of that cancellation of assignment without properly examining the share of the petitioner in his joint family holding is unsustainable and contrary to the well settled law that the authorities should take the share of the assignee in the family holding into consideration on the basis of notional partition, for deciding his eligibility to seek assignment of Government land."

Even the revisional authority in spite of such detailed grounds raised in the Revision Petition also did not consider the same and simply dismissed the revision based on the report of the Mandal Revenue Officer, when it is the case of the petitioner that the said report is not correct and no notice or opportunity was given by the Mandal Revenue Officer before preparing the said report. At least, the revisional authority should have considered the matter with reference to the grounds raised by the petitioner and ought to have recorded a finding on the said grounds and ought not to have dismissed the revision solely relying on the report of the Mandal Revenue Officer. Therefore, as much as the revisional authority has not considered the revision in proper perspective and it is not in dispute that the report of the Mandal Revenue Officer was without notice to the petitioner, I deem it an appropriate case where the order of the revisional authority has to be set aside and the matter has to be remitted back for fresh consideration. Accordingly, the order dated 14.9.2000 passed in proceedings No.BCW2/612/96 is set aside and the matter is remanded to the first respondent with a direction to consider the same afresh with reference to grounds of revision and any other material relevant on the aspect, after giving notice of hearing to the petitioners.

Writ Petition is partly allowed to the extent indicated above. No orders as to costs. Till appropriate final orders are passed, the order of cancellation of assignment dated 18.12.1995 passed by the

Joint Collector in proceedings D.Dis.B4/1220/94, shall remain suspended.

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12-9-2007

R.SUBHASH REDDY, J.

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